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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1255

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA AND DISTRICT NO. 2, UNITED MINE WORKERS OF AMERICA, *Petitioners,*

v.

SOLAR FUEL COMPANY AND PAUL SCHRECKENGOST, *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

The petitioners, International Union, United Mine Workers of America and District No. 2, United Mine Workers of America, respectfully pray that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Third Circuit entered in this proceeding on July 6, 1973.

OPINIONS BELOW

The judgment of the District Court for the Western District of Pennsylvania was entered without opinion on December 16, 1971. Relevant portions of the District Court's charge to the jury are appended to this petition (Appendix A, pp. 1a-9a *infra*). The unreported opinion of the District Court denying petitioners' motion for a judgment notwithstanding the verdict or a new trial (Appendix B, pp. 10a-26a *infra*) was filed August 10, 1972. The Court of Appeals affirmed without opinion July 6, 1973, in a judgment reported at 481 F.2d 1399 (Appendix C, p. 27a *infra*).

JURISDICTION

The judgment of the Court of Appeals (Appendix C) was entered July 6, 1973, and a timely motion for rehearing *en banc* denied September 18, 1973. On December 11, 1973, Mr. Justice Brennan signed an order (A-576) extending the time during which petitioners could file this petition to and including February 15, 1974. This petition is therefore timely filed under 28 U.S.C. § 2101(c). Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Whether a labor union and employers in a multi-employer bargaining group may agree to maintain wage uniformity within the group, free of treble damage antitrust liability.

2. Whether a clause in a multi-employer labor contract, which can reasonably be interpreted to aim simply at wage uniformity within the multi-employer group, must not be construed as an illegal conspiracy against outsiders absent clear extrinsic evidence that such a conspiracy exists.

STATUTORY PROVISIONS INVOLVED

The statutory provisions involved are Section 1 of the Sherman Act, 26 Stat. 209, as amended 15 U.S.C. § 1, and Section 6 of the Clayton Act, 38 Stat. 731, 15 U.S.C. § 17. They are included in full in Appendix D, pp. 28a-29a *infra.*

STATEMENT OF THE CASE

This litigation arose out of a strike by employees at two coal mines operated by the Solar Fuel Company near Hooversville, Somerset County, Pennsylvania. R. 10a-11a.[1] During the strike, which lasted from July 1967 until February 1969, the United Mine Workers of America (UMWA), the certified bargaining representative of Solar Fuel's employees,[2] sought unsuccessfully to reach agreement on a contract with Solar Fuel. R. 11a, 12a.

On January 9, 1969, Solar Fuel filed suit in federal district court, claiming that the Union's conduct of the strike and negotiations violated federal antitrust laws, and also advancing a federal claim of unfair labor practices and a pendant state tort claim. R. 12a, 1149a. Jurisdiction was sought under Section 4 of the Clayton Act, 15 U.S.C. § 15, and Section 303(b) of the Labor Management Relations Act, 29 U.S.C. § 187

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[1] "R." will hereinafter refer to the Appendix for Appellants filed in the Court of Appeals below. "A." will refer to the appendices in this petition.

[2] The International Union, United Mine Workers, was certified in 1966 to represent Solar Fuel's employees. District No. 2, United Mine Workers, is a division of the union covering the Central Pennsylvania coalfields. Both the International and the District were named as defendants in the trial court, and both are petitioners herein.

(b). The subject of this petition is the ultimate judgment in favor of Solar Fuel on the antitrust claim.[3]

Solar Fuel's theory of antitrust wrong-doing amounted to a simple, two-step argument:

(1) That the Union had agreed with one group of coal operators—the Bituminous Coal Operators' Association (BCOA), whose members are signatories to the Union's national coal contract—to impose uniform terms and conditions on small, independent operators like Solar Fuel, in order to drive the latter out of business. Solar Fuel's proof of the alleged Union-employer conspiracy was limited to one item of evidence: a clause in the national coal labor agreement called the Protective Wage Clause (PWC).[4] The PWC reads in pertinent part:

> During the period of this Contract, the United Mine Workers of America will not enter into, be a party to, nor will it permit any agreement or understanding covering any wages, hours or other

[3] The jury's antitrust judgment was for $125,000, which the court trebled to $375,000. R. 1132a, 1150a-1151a. The district court directed a verdict in favor of the UMWA on the unfair labor practice claim, while Solar Fuel was awarded an additional $45,000 in state tort damages. R. 1064a-1065a, 1133a, 1150a. Paul Schreckengost, a Solar Fuel supervisor, joined in suit with Solar Fuel, claiming damages of the same three types as those allegedly suffered by Solar Fuel. A verdict was directed against him on his unfair labor practice claim, and he was found not to have suffered any antitrust damages. R. 1064a-1065a, 1132a-1133a, 1150a. However, he was awarded $3,000 on his state tort claim. R. 1133a, 1150a.

[4] The PWC was introduced in the 1958 national coal contract, to which Solar Fuel was itself a signatory by virtue of its membership at that time in the Somerset County Coal Operators' Association. Solar Fuel resigned from the Association in 1958 or 1959, and thereafter was not covered by the national coal agreement. R. 97a-102a.

> conditions of work applicable to employees covered by this Contract on any basis other than those specified in this Contract or any applicable District Contract. The United Mine Workers of America will diligently perform and enforce without discrimination or favor the conditions of this paragraph and all other terms and conditions of this Contract and will use and exercise its continuing best efforts to obtain full compliance therewith by each and all the parties signatory thereto.

(2) That in actual bargaining with Solar Fuel during 1967 and 1968, UMWA negotiators insisted on terms that would bring Solar Fuel into line with the national contract.[5]

Absent any evidence of unlawful union-employer collusion other than PWC itself, the antitrust claim turned on a single question of law: whether PWC should be interpreted to apply to outsiders like Solar Fuel, as Solar Fuel contended; or whether PWC by its terms only had application to those coal operators who were already signatories to the national coal contract, as the Union contended. The trial judge ruled, as a matter of law, that PWC applied to outsiders like Solar Fuel and this, in and of itself, constituted an illegal, actionable conspiracy between the UMWA and BCOA employers.[6]

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[5] The National Bituminous Coal Wage Agreement of 1950, as Amended April 1, 1966. R. 1203a-1210a.

[6] Appendix A to this petition sets out the repeated rulings of the trial judge, made at bench conferences and embodied in jury instructions, to the effect that PWC by its terms applied to Solar Fuel. For example, the following colloquy which preceded instructions of the jury (R. 1055a):

> "THE COURT: . . . I am ruling this [the PWC] applied to Solar Fuel as a signatory. However, I am leaving to the

Under the court's instructions, the only question left for the jury was whether UMWA negotiators had in fact insisted that Solar Fuel sign a contract embodying the same terms as the national coal agreement.[7] The court's charge made clear that the PWC itself must be viewed as obligating the Union to insist on uniformity in its negotiations with outsiders, and the question remaining was simply whether the Union in fact insisted on uniformity as to Solar Fuel.[8] The jury resolved that sole factual issue in favor of

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jury whether the United Mine Workers did, as a matter of fact, try to enforce this. That is a matter of fact for the jury . . . .

"MR. LIVINGSTON [counsel for the Union]: And also, there is a question of whether or not the contract was an agreement, in fact, in restraint of trade or an attempt by the mine workers to represent their membership.

"THE COURT: I am saying it is not a restraint of trade unless it was attempted to be enforced.

"MR. LIVINGSTON: And even if attempted to be enforced, it is not, in effect, a restraint of trade.

"THE COURT: Well, that may be, but I am ruling that it is."

Thereafter the Court instructed the jury as follows (R. 1070a):

"We will say to you that there is, in this case, no direct evidence, other than the language of the contract, itself, of using this agreement as a device for this illegal purpose, to impose these terms on small operators for the purpose of ruining them, but, on the other hand, it does appear that the union, by the use of this language on its face, has disabled itself from negotiating other and less burdensome terms with other operators, whether signatories or not signatories to the agreement."

[7] Union witnesses conceded that the UMWA negotiators asked for a contract with Solar Fuel that gave the same benefits as the national wage agreement, but denied that the Union's negotiating position was inflexible: on their account the Union did not "insist" on uniformity with the national agreement. R. 12a, 1070a-1071a.

[8] Appendix A to this petition contains the trial court's repeated instructions and rulings narrowing the jury's deliberations to the single factual issue of "insistence" *vel non*.

the Company, and it followed, under the court's instructions, that the Union's antitrust liability was complete.

REASONS FOR GRANTING THE WRIT

THE DECISION BELOW REPUDIATES THE ESSENTIAL PRINCIPLE THAT THE ANTITRUST LAWS IN NO WAY PROHIBIT LABOR UNIONS AND EMPLOYERS FROM SEEKING WAGE UNIFORMITY THROUGH MULTI-EMPLOYER BARGAINING. AND THUS DOES GRAVE DAMAGE TO THE SCHEME OF THIS COURT'S DECISIONS IN UNITED MINE WORKERS v. PENNINGTON, 381 U.S. 657 (1965), AND RAMSEY v. UNITED MINE WORKERS, 401 U.S. 302 (1971).

This case involves fundamental questions concerning the historic exemption of legitimate Trade Union activities from proscription under the antitrust laws. The decisions below deal a crippling blow to labor unions who seek the proper and lawful goal of industry-wide uniformity in wages and working conditions, and thereby undercut the Federal labor policies articulated by this Court in *United Mine Workers* v. *Pennington*, 381 U.S. 657 (1965), and the chain of related cases.[9] If permitted to stand, the decisions below—by subjecting both employers and unions with which they bargain as a group to treble damage verdicts—will do grave violence to the concept of multi-employer bargaining and federal labor policy.

The *Pennington* line of cases makes abundantly clear that unions may pursue their valid interest in wage uniformity by (1) bargaining with a multi-employer unit to the end of achieving uniformity in wages

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[9] *Ramsey* v. *United Mine Workers*, 401 U.S. 302 (1971); *Allen Bradley Co.* v. *Local 3, IBEW*, 325 U.S. 797 (1945); *United States* v. *Hutcheson*, 312 U.S. 219 (1941).

and conditions throughout that unit, and (2) bargaining with individual employers in such a manner that uniformity with existing agreements might be the result. These activities, with the aim of industry-wide uniformity, were long ago placed by Congress beyond the reach of the antitrust laws. See, *e.g.*, Sections 6 & 20 of the Clayton Act, 15 U.S.C. § 17 & 29 U.S.C. § 52; Section 4 of the Norris-LaGuardia Act, 29 U.S.C. § 104.

However, it is true that the antitrust exemption is removed in one narrow circumstance: when a union *agrees and colludes with one group of employers to impose uniform terms on another group of employers,* to the end of running the latter group out of business by raising its labor costs. *Pennington* gives classic expression to the distinction:

> "We think it beyond question that a union may conclude a wage agreement with the multi-employer bargaining unit without violating the antitrust laws and that it may as a matter of its own policy, and not by agreement with all or part of the employers of that unit, seek the same wages from other employers.
>
> * * * *
>
> "But we think a union forfeits its exemption from the antitrust laws when it is clearly shown that it has agreed with one set of employers to impose a certain wage scale on other bargaining units."

381 U.S. at 664-65. That carefully-wrought distinction between lawful and unlawful activity, recently reaffirmed in *Ramsey* v. *United Mine Workers,* 401 U.S. 302, 312-13 (1971), must be maintained lest unions be disabled in pursuing, by proper means, the

valid goal of wage uniformity through free collective bargaining.

In this case, the courts below made complete hash of the *Pennington-Ramsey* principles. The lower courts found as a matter of law that illegal union-employer collusion was abroad, predicating that grave conclusion on one item of evidence and that alone: a clause of the Union's master collective bargaining agreement, the natural interpretation of which is totally benign. In so doing, the courts below have brought themselves into direct conflict with every other court to consider the matter (and with the four members of this Court who have given their views on the precise question); have without justification ignored the settled rule that collective agreements should be construed to avoid *per se* illegality when a benign construction is reasonable; and have put the essential scheme of *Pennington* in grave jeopardy by making it virtually impossible for labor unions to take any steps whatever toward the cherished goal of wage uniformity for their members.

A. The Decision of the Third Circuit Below Conflicts Squarely with Repeated Decisions of the Sixth Circuit, Some Made Pursuant to this Court's Mandates in Pennington and Ramsey.

The necessary predicate for an antitrust suit of the present type is a clear showing that the Union conspired and agreed with one set of employers to impose uniform standards on one or more third-party employers—here, upon respondent Solar Fuel. In this case the only evidence ever proffered by respondent as proof of an underlying union-employer conspiracy is a clause of the National Bituminous Coal Wage Agreement of 1958 called the "Protective Wage

Clause" (PWC).[10] Apart from PWC, which naturally enough was admitted in evidence by stipulation of the parties, the trial record simply shows that Solar Fuel's employees chose to be represented by the Union; that Solar Fuel refused to sign a contract with the Union, thus precipitating a strike during 1967 and 1968; and that (according to Solar Fuel's witnesses) the Union tailored its bargaining stance during the unsuccessful negotiations toward obtaining the same terms and conditions from Solar Fuel as were embodied in the national coal contract.[11] In short, apart from PWC there is *nothing whatever in this record* showing unlawful collusion or agreement in restraint of trade.

By singling out PWC as the sole and supposedly sufficient basis for antitrust liability, the courts below have created a decisional conflict of the most direct and unavoidable type, and one which only this Court may resolve. The antitrust implications of PWC have been in litigation for a decade, and every court to consider the question, save only the courts below, has squarely held as a matter of law that PWC in and of itself is wholly lawful and benign. See, *e.g., Ramsey* v. *United Mine Workers,* 265 F.Supp. 388, 412 (E.D.

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[10] The PWC is set out in pertinent part in the Statement, pp. 4-5 *supra.* The PWC was not carried forward in the national coal contracts of 1964, 1966 and 1968.

[11] The Union's witnesses testified that UMWA negotiators adopted a flexible position, not insisting on full uniformity with the national contract—Company witnesses asserted the contrary. This issue was the only question left for the jury on the question of antitrust liability, and the jury found for the Company.

The essential point is that a Union's insistence on uniformity with existing agreements, in and of itself, in no way violates the antitrust laws: "a union may adopt a uniform wage policy and seek vigorously to implement it . . . ." *Pennington,* 381 U.S. at 665 n. 2.

Tenn. 1967), *aff'd,* 416 F.2d 655, 659 (6th Cir. 1969) [12] *rev'd on other grounds,* 401 U.S. 302 (1971), *on remand,* 344 F.Supp. 1029, 1034 (E.D. Tenn. 1972),[13] *aff'd,* 481 F.2d 742, 755 (6th Cir.),[14] *cert. denied,* 42 U.S. L.W. 3326 (1973); *South-East Coal Co.* v. *Consolidation Coal Co.,* 434 F.2d 767, 782 (6th Cir. 1970),[15] *cert. denied,* 402 U.S. 983, *reh. denied,* 404 U.S. 877 (1971); *Tennessee Consolidated Coal Co.* v. *United Mine Workers,* 416 F.2d 1192, 1198 (6th Cir. 1969), *cert. denied,* 397 U.S. 964 (1970); *Lewis* v. *Pennington,* 257 F. Supp. 815, 862 (E.D. Tenn. 1966), *aff'd,* 400 F.2d 806, 814 (6th Cir.),[16] *cert. denied sub nom. Pennington* v. *United Mine Workers,* 393 U.S. 983 (1968), *reh. denied,* 393 U.S. 1045 (1969) (on remand after reversal

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[12] ". . . the disputed Protective Wage Clause, properly construed, did not require the Union to impose the wages therein contained on the nonsignatory employers." 416 F.2d at 659.

[13] ". . . The PWC was limited to signatories only and did not commit or limit the Union in its bargaining with non-signatory coal operators . . . ." 344 F.Supp. at 1034. ". . . The PWC did not constitute an express commitment upon the part of the UMW to bargain with other coal operators only upon terms set forth in the [national] contract . . . ." *Id.*

[14] "[The Court has] dealt extensively with the argument that the Protective Wage Clause constituted a per se violation of the antitrust laws and held that it could not properly be construed to do so." 481 F.2d at 755.

[15] ". . . the National Agreement containing the Protective Wage Clause is, on its face, a valid labor contract which seeks to implement the perfectly legal goals of uniformity of wages and working conditions. . . . '[T]here is nothing unlawful about that contract in itself' . . . ." 434 F.2d at 782.

[16] ". . . we agree with the District Court that the disputed Protective Wage Clause, properly construed, did not require the Union to impose the wages therein contained on nonsignatory employers." 400 F.2d at 814.

sub nom. United Mine Workers v. *Pennington,* 381 U.S. 657 (1965)).

Succeeding parts of this Petition will show that in unaccountably failing to follow the settled decisional treatment of PWC, the courts below have done grave damage to the scheme of *Pennington* and vital federal policies reflected therein. For the moment it is enough to have demonstrated that through this case the Third Circuit is now at war with repeated decisions of the Sixth Circuit, creating square conflict that is a compelling occasion for exercise of this Court's power of review.

Indeed, as the foregoing string cite shows, the antitrust status of PWC was a central feature of the litigation in *Pennington,* 381 U.S. 657, and *Ramsey,* 401 U.S. 302. In each case this Court itself declined to interpret the PWC or otherwise assess the record evidence bearing on the Union's antitrust liability,[17]

[17] It is instructive to compare the proof attempted by the antitrust claimants in the *Ramsey* litigation, held insufficient, with the one-item showing held sufficient below. In *Ramsey* this Court summarized the attempted proof as follows:

> "Petitioners in any event claimed that a conspiratorial arrangement between the Union and the major operators could be implied from the PWC, the course of negotiations between the Union and those operators from 1950 forward, and the ensuing organizational and strike activity against petitioners and other southeastern Tennessee operators aimed at securing agreement to and in compliance with the National Agreement as amended from time to time, as well as from the Union's purchase of a controlling interest in West Kentucky Coal Com. and the latter's allegedly predatory pricing in the TVA coal market."

401 U.S. at 305. See *Pennington,* 381 U.S. at 659-61, 664. By contrast, Solar Fuel felt no need to proceed beyond the first comma in the recitation above—it put the PWC into evidence (by stipulation), and left its proof of unlawful conspiracy at that. It succeeded; the *Ramsey* claimants failed.

though of course on remand—pursuant to this Court's mandate—the lower courts uniformly decided that PWC did not embody or reflect any illegal conspiracy. However, in *Ramsey* four Justices writing separately did find occasion to address the precise question involved herein:

> "It is argued that this agreement [the 1958 agreement containing PWC] constituted an agreement by United Mine Workers to impose the scale on all nonsignatory coal operators in order to force some (including petitioners) out of business. If that was the agreement then, as I said in Pennington . . ., the Union would have lost its exemption. *But there is not a word in the agreement, as I read it, that covers nonsignatory operators.*"

401 U.S. at 316 (emphasis added). Thus Mr. Justice Douglas, writing for himself and Justices Black, Harlan, and Marshall, came to the identical conclusion that is reflected in the long procession of Sixth Circuit decisions cited earlier, and that is squarely repudiated by the courts below.

B. The Decision Below Clashes with this Court's Firm Admonition that any Labor Contract Must be Construed on its Face to Avoid Per Se Antitrust Liability Whenever Such Benign Construction is Reasonable.

As shown by the reasoned decisions of the Sixth Circuit and the emphatic conclusion of four Justices of this Court, the PWC is wholly benign in purpose and intended effect, and by no means is expressive of any illegal conspiracy. But even if it were thought that PWC is ambiguous on its face—susceptible of two interpretations, one reflecting a lawful agreement and the other not—then the courts below erred gravely in failing to follow the settled rule that the bare lan-

guage of a collective bargaining agreement must be construed to avoid *per se* illegality when such an interpretation is available and reasonable.

This case presents a compelling occasion for review by this Court, to reaffirm the principle that a labor contract should not gratuitously be read to embody an illegal bargain. Here there is *no evidence whatever* of illegal union-employer collusion apart from the words of the PWC—no extrinsic facts to illuminate any ambiguity in the clause itself, much less show the bargaining parties to have intended a result violative of the antitrust laws. It is hornbook law that ambiguities in *any* contract should be resolved in favor of legality, when a benign interpretation is reasonable and not foreclosed by extrinsic evidence of unlawful intent.[18] That constructional rule has been explicitly followed by the Sixth Circuit with respect to PWC itself.[19] And this Court has emphasized the general

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[18] *Great Northern Ry. Co.* v. *Delmar Co.*, 283 U.S. 686 (1931); *Hobbs* v. *McLean*, 117 U.S. 567, 576 (1886); *Washington Capitols Basketball Club, Inc.* v. *Barry*, 419 F.2d 472, 478 (9th Cir. 1969); *Perry Coal Co.* v. *NLRB*, 284 F.2d 910 (7th Cir. 1960), *cert. denied* 366 U.S. 949 (1961); *Aronson* v. *K. Arakelian, Inc.*, 154 F.2d 231, 235 (7th Cir. 1946); *Lubbock Hotel Co.* v. *Guaranty Bank & Trust Co.*, 77 F.2d 152, 156 (5th Cir. 1935); *Behre* v. *Anchor Ins. Co.*, 15 F.2d 380, 383 (2d Cir. 1926); 4 Williston on Contracts (3d ed. Jaeger), pp. 747-8; Restatement of Contracts, Sec. 236.

[19] "The law is well settled . . . that where two constructions of a written contract are reasonably possible, preference must be given to that one which does not result in a violation of law."

Ramsey v. *United Mine Workers*, 265 F.Supp. 388, 412 (E.D. Tenn. 1967), *aff'd*, 416 F.2d 655, 659 (6th Cir. 1969). See also *Lewis* v. *Pennington*, 400 F.2d 806, 814 (6th Cir.), *cert. denied sub nom. Pennington* v. *United Mine Workers*, 393 U.S. 983 (1968), *reh. denied*, 393 U.S. 1045 (1969).

proposition that the rule is especially to be followed with respect to labor contracts,[20] which are instruments drafted by laymen to serve as the basis for continuous, peaceable and fruitful relations between the bargaining parties. Courts and arbitrators must be mindful of the duty to construe such agreements in light of their presumed lawful objectives, and not to intrude and cancel a bargain simply because the words chosen are consistent with either lawful or unlawful aims.

The PWC is embodied in a national wage agreement between the Union and the Bituminous Coal Operators' Association (BCOA), a multiemployer bargaining group. The clause speaks to the matter of maintaining uniform wage standards.[21] On respondents' interpretation—and that of the courts below—the PWC amounts to an illegal conspiracy between the Union and BCOA, whereby the Union agrees to seek to impose the national contract's terms on nonsignatory employers like Solar Fuel.[22] The alternative, wholly

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[20] See the discussion below.

[21] It is set forth in the Statement, pp. 4-5 *supra*.

[22] In fact Solar Fuel has never been clear as to the content of the supposedly illegal bargain, nor was the district court, as is amply shown by the series of bench discussions concerning jury instructions below. See 1a-9a, *infra*. One proffered interpretation of PWC (the one embraced by the lower courts here) is that it commits the Union to impose uniform standards on *all nonsignatories* to the national contract—this interpretation was squarely rejected by the lower courts on remand in *Pennington* and *Ramsey*. The second interpretation (urged unsuccessfully by Solar Fuel below) is rather kinder to the Union and BCOA: The PWC is seen as committing the Union to impose national standards on just those coal operators who *once were signatories* but who for some reason have ceased to be parties to the national contract (*e.g.*, Solar Fuel). The only virtue of the latter view is novelty, bought at the cost of complete infidelity to the text of PWC, which by no

benign interpretation is that PWC is simply an undertaking by the Union and BCOA to maintain uniform contract standards *inter sese*—that is, through PWC the Union expressly promises to police the national contract *as to the signatories* of that contract, to take steps to avert and redress noncompliance *by signatories*, and to forswear deviating local agreements *with signatories* during the life of the national contract.

The latter interpretation, of course, is far and away the more natural and reasonable reading of PWC. The clause itself contains not a syllable suggesting that uniform standards are to be imposed *outside* the multi-employer group. As the Sixth Circuit put the matter in its most recent opinion in *Ramsey*,

> ". . . the PWC refers neither to future nor previous signatories, but rather to 'signatory operators' and to 'employees covered by this contract.' The conclusion must accordingly be . . . that the PWC did not constitute an express commitment upon the part of the UMW to bargain with other coal operators only upon terms set forth in the contract made with the BCOA."

481 F.2d at 754, following 344 F.Supp. at 1034.

By grasping for a malign interpretation of PWC, the lower courts herein adopted an approach flatly at odds with this Court's rulings in *Allen Bradley Co.* v. *Local 3, IBEW*, 325 U.S. 797 (1945), and *NLRB* v. *News Syndicate Co.*, 365 U.S. 695 (1961). Those cases give expression to the vitally important constructional

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stretch makes any such distinction. This "prior signatory" view was likewise squarely rejected on remand in *Ramsey*. See, *Ramsey* v. *United Mine Workers*, 344 F.Supp. 1029, 1034 (E.D. Tenn. 1972), *aff'd*, 481 F.2d 742, 754 (6th Cir.), *cert. denied*, 42 U.S.L.W. 3326 (1973).

principle that a labor contract must not be construed, on its face and absent extrinsic evidence, as evincing an illegal objective when an alternative lawful interpretation is reasonable.

Allen Bradley was the first articulation by this Court of the rule that a labor union may forfeit its antitrust exemption by colluding with employers in restraint of trade. There this Court noted that the union's bargaining agreement itself could be read to reflect an illegal conspiracy, but added:

> "We may assume that such an agreement standing alone would not have violated the Sherman Act."

325 U.S. at 809.[23] In *News Syndicate* this Court confronted a labor contract that by its very terms seemed to set up a discriminatory hiring hall arrangement in violation of the National Labor Relations Act. This Court admonished:

> "... we will not assume that unions and employers will violate the federal law, favoring discrimination in favor of union members against the clear command of Congress. As stated by the Court of Appeals, 'in the absence of provisions calling explicitly for illegal conduct, the contract cannot be held illegal because it failed affirmatively to disclaim all illegal objectives.' "

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[23] In line with *Allen Bradley*, the lower courts have ruled that bargaining agreements should not be construed to embody illegal conspiracies to restrain trade, in cases where a lawful interpretation is available. For example, in *Adams Dairy Co.* v. *St. Louis Dairy Co.*, 260 F.2d 46, 52-55 (8th Cir. 1958), the Court ruled that a labor contract should not be deemed on its face to reflect *per se* illegality under the antitrust laws, absent extrinsic evidence of union-employer collusion directed at third-parties.

365 U.S. at 699-700. See also *Local 357, Teamsters* v. *NLRB*, 365 U.S. 667 (1961).[24]

The failure of the lower courts to heed the admonitions of *Allen Bradley* and *News Syndicate* is particularly devastating to the Congressional exemption of legitimate trade union activity from antitrust liability. In an antitrust suit of the *Pennington-Ramsey* type, the gist of the case is whether unlawful union- employer collusion can be shown. A labor contract by its very nature is a union-employer bargain. If courts are willing to find *per se* illegality on the face of labor contracts, despite the availability of perfectly lawful readings, then this Court need not have bothered to articulate the *Pennington-Ramsey* test. Antitrust liability will turn on draftsmanship, with crushing treble

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[24] *News Syndicate* has been followed faithfully by the lower courts, engendering judicial writing that could not speak more directly to the problem at hand. For example, in *Local 138, Operating Engineers* v. *NLRB*, 321 F.2d 130 (2d Cir. 1963), the bargaining agreement expressly limited certain privileges and benefits to "union members," and the NLRB ruled that such clauses amounted to per se violations of the duty not to discriminate. The Court rejoined:

> ". . . the Board has not shown or even attempted to show that any of [the clauses in question] has been discriminatorily applied. For aught that appears, references to union members in the agreement are simply references, naturally phrased by a union entering into an agreement with an employer, to all employees . . . . We will not approve a finding of a violation which is based solely on words in an agreement which lend themselves as easily to a construction consistent with the Act as to a construction which if carried into effect, would result in conduct illegal under the Act."

321 F.2d at 134. See also, *e.g.*, *NLRB* v. *Southern Stevedoring & Contracting Co.*, 332 F.2d 1017, 1019 (5th Cir. 1964); *NLRB* v. *Miranda Fuel Co.*, 326 F.2d 172, 175 (2d Cir. 1963).

damage recoveries against both unions and contracting employers lurking in every textual ambiguity that slips by negotiators.

The proper rule—which this Court should reaffirm on the occasion of the present case—is that a labor agreement should be presumed to be lawful. If extrinsic evidence shows that the actual conduct of the union and agreeing employers is illegal, then so be it, but the words of a labor agreement "standing alone" should be construed in line with legality whenever a legal construction is reasonable.

C. The Decision Below Uniquely Jeopardizes the Scheme of Pennington and Ramsey by Predicating Antitrust Liability on Precisely the Sort of Union and Employer Conduct that this Court has Endeavored to Protect.

The constructional approach of the lower courts not only turns this Court's *Pennington-Ramsey* test into a trap for the unwary draftsman. It also undermines the fundamental substantive purpose of *Pennington-Ramsey*—to protect unions (and agreeing employers) in their legitimate pursuit of wage uniformity—in a manner that calls for correction by this Court.

The PWC in fact reflects, not any sort of illegal agreement, but precisely the kind of wage uniformity objective that *Pennington* and the other cases hold to be fully protected. Through PWC, the Union and members of the multiemployer unit undertake to maintain uniformity *among themselves* in matters covered by the national agreement (wages, job classifications, pension royalties, and so on). As this Court said in *Pennington,* "a union may adopt a uniform wage

policy and seek vigorously to implement it . . . ." 381 U.S. at 665 n.2.

> ". . . a union may make wage agreements with a multiemployer bargaining unit and may in pursuance of its own union interests seek to obtain the same terms from other employers. No case under the antitrust laws could be made out on evidence limited to such union behavior."

Id. at 665.[25]

In this case the evidence is indeed limited to precisely such behavior: a) the Union sought uniformity within the multiemployer group through PWC; and b) the Union, acting on its own, sought to strike a bargain with an independent employer, Solar Fuel, that would bring the latter into line with the national contract.

But the lower courts proceeded to misconstrue the multiemployer uniformity pledge (the PWC) as an illegal agreement to impose national contract standards on nonsignatory third-parties. That mistake of law uniquely threatens the whole scheme of *Pennington* and related cases. For it amounts to saying that a union's insistence on a pledge of uniformity within the

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[25] ". . . labor contracts establishing more or less standardized wages, hours, and other terms and conditions of employment in a given industry or market area are often secured either through bargaining with multiemployer associations or through bargaining with market leaders that sets a 'pattern' for agreements on labor standards with other employers. These are two similar systems used to achieve the identical result of fostering labor peace through the negotiation of uniform labor standards in an industry."

Meat Cutters v. *Jewel Tea Co.*, 381 U.S. 676, 722 (1965) (Goldberg, J.).

multiemployer unit—something that is protected, if not encouraged, by *Pennington*—cannot be distinguished from an illegal conspiracy to turn upon outsiders. By the same token, the lower courts' approach means that once a union has achieved multiemployer uniformity, it must thereafter be extremely tender in negotiating with outsiders, to avoid any appearance of insisting on uniform terms for the industry.

In short, the lower courts have said precisely the opposite of what this Court said in *Pennington*: the decisions below mean that a union may *not* "adopt a uniform wage policy and seek vigorously to implement it."

This Court should grant certiorari because the proper resolution of the legal issues in this case is essential lest the scheme of *Pennington* be destroyed as a practical matter. It has become necessary for this Court further to articulate the *Pennington-Ramsey* test, and to affirm specifically:

a) That it is wholly proper and lawful for a labor union to seek to ensure uniformity within a multiemployer unit and to give voice to this objective by way of mutual covenants in a multiemployer agreement; and

b) that a clause in a multiemployer contract, which can reasonably be interpreted to aim simply at uniformity *within the unit* must not be interpreted as illegal collusion aimed at imposing uniform terms on outsiders absent clear extrinsic evidence that such a conspiracy in fact exists.

CONCLUSION

For the foregoing reasons, petitioners respectfully pray that this Court's writ of certiorari should issue.

Respectfully submitted,

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